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11 Apr 78

MEMORANDUM FOR: Director of Central Intelligence

FROM:
Acting Legislative Counsel

SUBJECT: Your Meeting Scheduled for 12 April 1978
with Mr. Vincent Davis

REFERENCE: Letter Addressed to You from Mr. Davis dated 29 March 1978

1. Action Requested: No action requested; for your information only. This memorandum provides you with some points relating to the intelligence charter legislation that you may wish to discuss with Mr. Davis.

2. Background: In his letter to you, Mr. Davis says he has been invited to testify on S. 2525, the intelligence charter legislation, by Senator Walter Huddleston (D., Ky.). Mr. Davis indicates he would be willing to incorporate in his testimony issues that you would like to see raised regarding the charter legislation.

Inasmuch as we are in the process of developing Administration positions on the charter legislation, it would seem inappropriate for you to impart to Mr. Davis your views on the legislation for him to raise in his testimony; if he were to do this, he would in a sense be acting as your "surrogate" and could be considered "lobbying" on your behalf. However, it would not seem at all inappropriate if you discuss with Mr. Davis charter legislation in general and include a discussion of your concerns with the charter legislation and your ideas as to what should be included in the legislation. You are certainly entitled to have your own views on the legislation, and Mr. Davis is likewise entitled to address in his testimony whatever he deems appropriate.

With this background the following notes are provided as possible issues which you may want to discuss with Mr. Davis:

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--New statutory charters for the Government's intelligence organization and capability is not a bad thing; such legislation could bring a much needed degree of clarity and confidence to the Intelligence Community.

--There is no need, however, to rush into development of new charters; the process should be deliberate and thorough.

--The focus of the legislation and of the legislative process should be forward looking, rather than focusing on alleged abuses of the past.

--It must be kept in mind that the new charters must present clear authority for intelligence activities in such a manner as to be understandable and workable; the mandate must be workable.

--The legislation must not be so detailed as to stifle ingenuity, lead to an overly cautious mentality on the part of intelligence officers and organizations, or give rise to the situation whereby particular activities although not explicitly proscribed would be deemed to be restricted simply for lack of an explicit authorization (this is always a danger in attempting to be completely comprehensive and detailed in legislation).

--The legislation must recognize that we are operating in a real world and that we have to deal with foreign individuals and organizations in intelligence matters; the legislation therefore should not be so explicit in attempting to govern such relationships so as to dry them up.

--Under present law, and under S. 2525 as introduced, the Director of Central/National Intelligence is made responsible for protecting intelligence sources and methods; neither existing law nor S. 2525, however, provides "statutory teeth" for enforcing this responsibility (this issue, although important, perhaps should be raised only as a concern, since the Administration has not yet developed a firm position on sources and methods legislation).

--The legislation should not result in "micro-management" of the intelligence business.

--Organizationally, legislation should continue to recognize that the Director--whether it be of "National Intelligence" or of "Central Intelligence"--must have an independent bureaucratic base from which to operate.

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--It is important that the legislation afford due recognition of the prerogatives of the Executive Branch in providing information to the Congress; in this regard, for example, provision for prior reporting to the Congress as to certain categories of activities may very well conflict with those prerogatives.

--The legislation must continue to recognize that the Government must have the capability to conduct "special activities" in certain circumstances; moreover, the legislation should not--as S. 2525 arguably does--impose such detailed and extensive requirements on the initiation and conduct of special activities so as to almost completely diminish the possibility of maintaining the confidentiality of such activities.

--Executive Order 12036 is only some ten weeks old; a conscious effort must be made to determine the workability of the provisions in the Executive Order, to identify where the requirements and procedures contained therein are adequate and where there are problems.

--It is certainly important that the charter legislation recognize, if not explicitly then certainly by implication, rights of U.S. citizens; care should be taken, however, to ensure that such recognition does not completely engulf the need to engage in counterintelligence and certain intelligence activities within the U.S. and regarding U.S. officials.

--Efforts to legislate a listing of specific restrictions on activities, as S. 2525 does, can be extremely problematic; careful consideration should be given to whether this is either workable or appropriate.

--Limitations, as to duration and techniques regarding counterintelligence and intelligence activities in the U.S., such as those contained in Title II of S. 2525, if they are to remain in the legislation, must be developed on the basis of practical considerations rather than mere theoretical views of what intelligence activities should be.

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--Likewise, as to reporting requirements contained in the charter legislation, of which S. 2525 has several dozens, must be considered in terms of workability and the tasks and priorities of Executive Branch officials.

--The legislation should not preclude the voluntary provision of information to, or association with, intelligence agencies by individual citizens from whatever profession or walk of life.

3. Recommendation: It is recommended that you use the above listing of issues relating to the intelligence charter legislation as the basis for any discussion on this subject with Mr. Vincent Davis.



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